



# *The Commonwealth of Massachusetts*

*Department of Revenue*

*Leverett Saltonstall Building,*

*100 Cambridge Street, Boston 02204*

L. JOYCE HAMPERS  
COMMISSIONER

January 16, 1981

You represent a Georgia corporation ("Corporation") engaged in the business of leasing instructional videotapes. The Corporation is contemplating leasing tapes to individuals or businesses in Massachusetts. The Corporation will have no employees or agents outside Georgia, nor will it solicit orders in Massachusetts otherwise than by direct mail. All customer orders will be accepted in Georgia. You inquire whether the Corporation will be subject to Massachusetts taxes if it leases videotapes to Massachusetts lessees.

Section 7 of the Massachusetts sales tax (General Laws Chapter 64H) provides that no person shall do business in Massachusetts as a vendor unless a registration shall have been issued to him for each place of business. For purposes of the sales and use taxes, "engaged in business in Massachusetts" includes "having a business location in the commonwealth," and a person is considered to have a business location in Massachusetts if such person regularly leases out tangible personal property for use in Massachusetts. Chapter 64H, Section 1(5); Chapter 64I, Section 1(1).

The Corporation will be required to register as a Massachusetts vendor and pay over sales and use taxes to Massachusetts if it leases videotapes for use in Massachusetts.

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Section 39 of the Massachusetts corporate excise (General Laws Chapter 63) provides that the excise must be paid by

"every foreign corporation, exercising its charter, or qualified to do business or actually doing business in the commonwealth, or owning or using any part or all of its capital, plant or any other property in the commonwealth."

It further provides:

"The excise levied herein is due and payable on any one or all of the following alternative incidents:

(1) The qualification to carry on or do business in this state or the actual doing of business within the commonwealth in a corporate form. The term "doing business" as used herein shall mean and include each and every act, power, right, privilege, or immunity exercised or enjoyed in the commonwealth, as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations, as well as, the buying, selling or procuring of services or property.

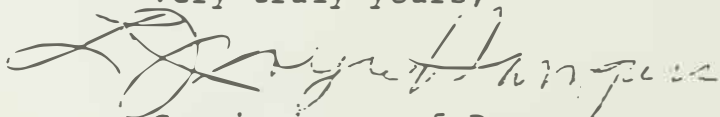
(2) The exercising of a corporation's charter or the continuance of its charter within the commonwealth.

(3) The owning or using any part or all of its capital, plant or other property in the commonwealth in a corporate capacity.

It is the purpose of this section to require the payment of this excise to the commonwealth by foreign corporations for the enjoyment under the protection of the laws of the commonwealth, of the powers, rights, privileges and immunities derived by reason of the corporate form of existence and operation."

If the Corporation leases videotapes to Massachusetts customers, it will be subject to the Massachusetts corporate excise.

Very truly yours,

  
Commissioner of Revenue

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